

1   **HEALTH AND SENIOR SERVICES**

2   **DIVISION OF AGING AND COMMUNITY SERVICES**

3  
4   **Adult and Pediatric Day Health Services**

5  
6   **Proposed Amendments: N.J.A.C. 8:86-1.1, 1.2, 1.3, 2.1, and 2.2**

7   **Proposed Repeals: N.J.A.C. 8:86-1.6, 1.7 and 1.9, and 8:86 Appendices E, F, and G**

8   **Proposed Repeals and New Rules: N.J.A.C. 8:86-1.4 and 1.5 and 8:86 Appendices**  
9   **A, B, C and D.**

10   **Proposed Recodification with Amendments: N.J.A.C. 8:86-1.8 as 1.6, and Appendix**  
11   **H as Appendix E**

12  
13   Authorized By: \_\_\_\_\_

14                   Clifton R. Lacy, M.D.

15                   Commissioner, Department of Health and Senior Services.

16  
17   Authority: N.J.S.A. 30:4D-7 and 12; and Reorganization Plan 001-1996.

18   Calendar Reference: See Summary below for explanation of exception to calendar  
19   requirement.

20   Proposal Number:   PRN 2004-431

21  
22   Submit written comments by March 8, 2005, to:

Mary P. McKeon Stosuy, JD, MHSA  
Senior Services Legal Specialist  
Department of Health and Senior Services  
PO Box 807  
Trenton, NJ 08625-0722

The agency proposal follows:

### **Summary**

The Department is proposing revisions to the rules for Medical Day Care Services, N.J.A.C. 8:86, which include requirements for provider participation, beneficiary eligibility, and reimbursement for services. The proposed amendments, new rules, and repeals would render the chapter better able to assist the Department in ensuring that adult beneficiaries are served in an adult day health services facility and in resolving the current state of inconsistency with the licensure standards at N.J.A.C. 8:43F.

The Department is conducting a study of pediatric day health services and will promulgate substantially revised rules for these facilities in the future. Currently prior authorization does not routinely apply to pediatric day health services. The proposed rules, however, give the Department the authority to require, at its discretion, prior

1 authorization of eligible beneficiaries by professional staff designated by the Department  
2 in new or existing pediatric day health services facilities.

3  
4 On July 6, 1999, the Department proposed a recodification with amendments of  
5 the Medical Day Care Services Manual. (See 31 N.J.R. 1762(a).) The recodification  
6 from Title 10 to Title 8 of the New Jersey Administrative Code was proposed in  
7 recognition of the transfer of authority for the medical day care program from the  
8 Department of Human Services to the Department of Health and Senior Services  
9 pursuant to Reorganization Plan 001-1996. The proposed amendments included  
10 agency name changes, corrections of internal references, and more substantive  
11 provisions, such as expansion of the rules regarding prior authorization of medical day  
12 care services and revision of the reimbursement methodology.

13  
14 The Department received written comments from 65 individuals in response to  
15 the notice of proposal, many of which concerned the proposed amendments to the  
16 procedure for obtaining prior authorization and reimbursement methodology. The  
17 Department also received comments from 26 individuals at a public hearing held on July  
18 28, 1999. Based on these comments, the Department withdrew the proposal (see 32  
19 N.J.R. 1121(a)).

20  
21 The recodification of N.J.A.C. 10:65 to N.J.A.C. 8:86 and minor technical  
22 amendments have since been adopted as part of the readoption of the rules. (See 33  
23 N.J.R. 55(a).) This new proposal presents or reintroduces other substantive and

1 technical amendments which the Department believes to be necessary at this time.  
2 These include, for reasons discussed below, prior authorization and more precise  
3 beneficiary eligibility criteria for individuals to receive adult day health services. In  
4 recognition of the value of uniformity of language when referring to like entities, the  
5 proposed rules replace the term “medical day care” with “adult or pediatric day health  
6 services” -- a term which is used nationally and in other Departmental rules.

7 Another feature of this proposal is the repeal of sections addressing areas that  
8 are traditionally and more properly the domain of licensure regulations. The specific  
9 provisions will be described in more detail below. The licensure rules for adult and  
10 pediatric day health services at N.J.A.C. 8:43F were adopted on June 18, 2001, and  
11 thus are considerably newer and more appropriate than the corresponding Medicaid  
12 rules which were recodified into Title 8 from Title 10. The coexistence of duplicative  
13 rules in N.J.A.C. 8:86 and 8:43F is the source of numerous inconsistencies which this  
14 proposal and the proposal of amendments to N.J.A.C. 8:43F published elsewhere in this  
15 issue of the New Jersey Register are intended to correct.

16  
17 Other amendments are being proposed in the interest of clarity and accuracy.  
18 For example, the term “recipient “ has been replaced with the defined term “Adult or  
19 pediatric day health services beneficiary” or “beneficiary” throughout this chapter so as to  
20 be consistent with other Medicaid program chapters administered by the Department of  
21 Health and Senior Services and by the Department of Human Services. Where  
22 reference to the attending physician has been made, reference to a physician assistant  
23 and advanced practice nurse has been added in recognition of the fact that the

1 beneficiary's primary care professional may be of any of these three professional  
2 groups. Additionally, where eligibility or reimbursement for services through specific  
3 programs is mentioned throughout this chapter, text has been modified to include  
4 reference to the programs which have been established since the current rules were  
5 adopted, such as the Jersey Assistance for Community Caregiving (JACC) program.

6  
7 The following is a discussion of specific changes which are being proposed.

8  
9 Proposed N.J.A.C. 8:86-1.1(a) states that the purpose of adult and pediatric day  
10 health services is the fulfillment of the health needs of eligible individuals who could  
11 benefit from a health services alternative to total institutionalization

12 Proposed N.J.A.C. 8:86-1.1(b) enumerates various Medicaid and State-only-  
13 funded programs through which an individual may be eligible to receive adult or pediatric  
14 day health services. As the scope of services in the NJ Family Care - Plan A, fee-for-  
15 service, Adult Family Care (AFC), Caregiver Assistance (CAP), and Jersey Assistance for  
16 Community Caregiving (JACC) Programs includes adult or pediatric day health services,  
17 reference to these programs has been added. Proposed N.J.A.C. 8:86-1.1(b) also  
18 provides that a beneficiary must satisfy the clinical eligibility requirements set forth in  
19 N.J.A.C.8:86-1.5.

20  
21 New definitions are being proposed at N.J.A.C. 8:86-1.2 for the terms "ACCAP,"  
22 "ADL," "adult or pediatric day health services beneficiary" or "beneficiary," "adult or  
23 pediatric day health services facility," "advanced practice nurse," "AFC," "CAP,"

1 “Department,” “HCEP,” “HIV adult day health services facility,” “JACC,” “legally  
2 authorized representative,” “licensed practical nurse (LPN),” “limited assistance,”  
3 “Medicaid beneficiary,” “medical nutrition therapy,” “medication administration,” “pediatric  
4 day health services facility,” “physician assistant,” “registered professional nurse or “RN,”  
5 “skilled services,” “supervision/cueing” and “wounds.” Definitions of “administration –  
6 medical day care center,” “Division,” “Medicaid District Office,” “prior authorization,” and  
7 “volunteer” are no longer necessary and have been deleted.

8  
9 The definition of “medical day care center” and the embedded definition of  
10 “pediatric medical day care center” have been replaced by a general definition of “adult  
11 or pediatric day health services facility” and a specific definition of “pediatric day health  
12 services facility.”

13  
14 N.J.A.C. 8:86-1.3 covers two distinct areas - program participation and program  
15 evaluation. The section heading has been modified to include both topics in order to  
16 assist the reader in locating the corresponding requirements.

17  
18 Proposed N.J.A.C. 8:86-1.3(a)2 specifies the source of forms to which providers  
19 will need access in order to become providers of adult or pediatric day health services  
20 under the Medicaid, HCEP, or JACC programs. These forms, The New Jersey Medicaid  
21 Provider Application, PE-1, The Participation Agreement, PE-5, and a written Narrative  
22 Statement will be incorporated by reference in the proposed rules as Appendix A,  
23 Appendix B and Appendix C, respectively. In addition to meeting the Departmental

1 licensure and approval requirement for all providers, JACC providers or vendors must be  
2 approved as such.

3  
4 Rather than requiring submission of quarterly participant profiles and discharge  
5 forms, proposed N.J.A.C. 8:86-1.3(a)3 requires that the facility maintain a daily  
6 attendance record and submit a monthly roster of beneficiaries to the Department.  
7 Under the current rules, the Medical Day Care Participant Profile is incorporated by  
8 reference as Appendix E. Under the current rules, the Quarterly Discharge Form is  
9 incorporated by reference as Appendix F. The proposed rule requiring the maintenance  
10 of a daily attendance record is the reason that Appendices E and F are proposed for  
11 repeal.

12  
13 N.J.A.C. 8:86-1.3(a)4 currently requires that an annual cost study be prepared by  
14 the facility. The proposed amendment would enhance the value of the rule by adding a  
15 requirement for a financial statement that is prepared in accordance with generally  
16 accepted accounting principles and signed by a certified public accountant. As an  
17 additional requirement, cost reports must be signed by the facility administrator.

18  
19 The current N.J.A.C. 8:86-1.3(a)4i has been deleted, as that subparagraph, which  
20 concerns hospital cost reporting and reimbursement, is currently found in the Hospital  
21 Services Manual at N.J.A.C. 10:52-2.7(c)2 and need not be duplicated in N.J.A.C. 8:86.  
22 Proposed N.J.A.C. 8:86-1.3(a)4i provides that cost reports and financial statements  
23 shall be maintained at the adult and pediatric day health services facility and that the

1 cost reports and financial statements shall be available for review by, or submission to,  
2 the Department upon request.

3  
4 Proposed N.J.A.C. 8:86-1.3(b) preserves the provision for ongoing evaluations  
5 and for notifying the adult or pediatric day health services facility of the results of the  
6 Department's on-site evaluation, but reference to a particular form, MCNH-89,  
7 incorporated by reference as Appendix D, which is no longer in use has been deleted.

8  
9 The current N.J.A.C. 8:86-1.3(c)1 cites examples of actions which the  
10 Department may take upon finding that a facility has not implemented its plan of  
11 correction for substandard services and/or inadequate documentation or otherwise  
12 violating any applicable regulations. These examples are being replaced by cross-  
13 reference to N.J.A.C. 8:43E, which sets forth the different enforcement remedies  
14 available to the Department.

15  
16 Proposed N.J.A.C. 8:86-1.3(d) has been amended to establish that if a provider  
17 engages in substandard practices or violates other applicable law, the provider will be  
18 subject to the enforcement provisions contained in N.J.A.C. 10:49, N.J.A.C. 8:43E or  
19 other applicable law or regulation. The facility's right to a hearing is addressed at  
20 proposed N.J.A.C. 8:86-1.3(e).

21  
22 The maximum daily census for any pediatric day health services facility is  
23 unchanged and is specified at proposed N.J.A.C. 8:86-1.3(g), as 27 children.



1  
2       The Department is repealing existing N.J.A.C. 8:86-1.4, Required Services  
3 because the existing provisions are traditionally and more properly within the domain of  
4 licensure regulations. Rules for required professional and consultative services are  
5 proposed in the companion licensing rules for adult and pediatric day health service  
6 facilities, N.J.A.C. 8:43F published elsewhere in this issue of the Register.

7  
8       Likewise, the Department is also proposing to repeal N.J.A.C. 8:86-1.5, Staff, 1.6,  
9 Recipient review, evaluation and identification, 1.7, Records and 1.9, Disaster Plan. The  
10 requirements and substantive provisions of these rules proposed for repeal are  
11 incorporated into the proposed rules contained in N.J.A.C. 8:43F published elsewhere in  
12 this issue of the Register.

13  
14       Proposed N.J.A.C. 8:86-1.4(a) and (b) set forth the minimum number of hours per  
15 day and the maximum number of days per week for which adult and pediatric  
16 beneficiaries, respectively, receive services in an adult or pediatric day health services  
17 facility. Proposed N.J.A.C. 8:86-1.4(a) clarifies the intent of current N.J.A.C. 8:86-  
18 1.4(b)3 that the adult beneficiary's physical and psychosocial needs require and can be  
19 satisfied by a minimum of five hours of adult day health services per day provided up to  
20 five days per week. Whereas an adult must receive a minimum of five hours of services  
21 per day, a child must receive at least six hours per day, in accordance with proposed  
22 N.J.A.C. 8:86-1.4(b). Rather than specifying the number of hours including "portal to  
23 portal" transportation time, as do the current rules, subsections (a) and (b) specify the

1 number of hours excluding transportation time. As is presently the case, if six hours is  
2 contraindicated because of the medical condition of a child, the minimum number of  
3 hours of pediatric services which may be approved by the attending physician, physician  
4 assistant, or advanced practice nurse, excluding transportation time, is three hours. In  
5 the cases of both adults and children, the maximum number of days per week  
6 reimbursed by the Medicaid program is five.

7  
8 Proposed N.J.A.C. 8:86-1.4(c) represents a clarification of current N.J.A.C. 8:86-  
9 1.4(a)10i. The proposed rule more clearly states that the adult or pediatric day health  
10 services facility is required to provide transportation to and from rehabilitation services  
11 addressed in the individualized plan of care, rather than to “services provided indirectly  
12 by the center,” in addition to transportation to and from home. Proposed N.J.A.C. 8:86-  
13 1.4(c)1 is equivalent to the current N.J.A.C. 8:86-1.4(a)10ii.

14  
15 The simultaneous existence of distinct Medicaid clinical eligibility criteria for adult  
16 day health services in both N.J.A.C. 8:43F and 8:86 has been a source of confusion.  
17 Based on the results of recent inspections of adult day health services facilities, the  
18 Department has determined that there is a need to revise the Medicaid eligibility criteria  
19 to ensure that Medicaid reimbursement is provided only for services provided to  
20 beneficiaries who require the services of an adult day health services facility. Proposed  
21 N.J.A.C. 8:86-1.5 replaces the eligibility criteria currently at N.J.A.C. 8:86-1.4(b) with  
22 more precise requirements and requires that the individual receive prior authorization  
23 from the Department.

1  
2 In accordance with proposed N.J.A.C. 8:86-1.5(a), prior authorization to receive  
3 adult day health services would be based on an assessment using an instrument  
4 prescribed by the Department, meeting the eligibility criteria of proposed N.J.A.C. 8:86-  
5 1.5(g), and on information provided by persons having knowledge of the assessed  
6 individual. Proposed N.J.A.C. 8:86-1.5(d) requires that the assessment and eligibility  
7 determination would routinely be performed by professional staff designated by the  
8 Department. The Department, however, may choose to authorize the facility to perform  
9 the eligibility assessment. In this case, the facility would be required to comply with the  
10 procedure delineated at proposed N.J.A.C. 8:86-1.5(e) and would be subject to periodic  
11 audits by the Department of eligibility determinations. The Department reserves the right  
12 to withdraw the facility's right to perform prior authorization if the facility is found in  
13 default of the aforementioned procedures or for administrative or policy decisions made  
14 by the Department, with due notice to the affected facility. In either case, reassessments  
15 of eligibility would be performed at least annually and whenever the beneficiary's plan of  
16 care is revised in such a way as to indicate a significant change in the beneficiary's  
17 status. Proposed N.J.A.C. 8:86-1.5(b) requires the facility administrator to certify that the  
18 individual is Medicaid eligible. Proposed rule 8:86-1.5(c) further requires that a signed  
19 acknowledgement that the initial determination of eligibility is not permanent, and that  
20 redeterminations will be made on the basis of future assessments, be retained as part of  
21 the beneficiary's permanent record.

1           The right of an individual to contest a determination of ineligibility to receive  
2   adult day health services is addressed at proposed N.J.A.C. 8:86-1.5(f) i through iv .  
3   Proposed N.J.A.C. 8:86-1.5(e)6 concerns determinations of ineligibility made by staff  
4   of an adult day health services facility and involves a review by the Department of the  
5   facility decision. Proposed N.J.A.C. 8:86-1.5(f) provides a mechanism to appeal  
6   decisions rendered by the Department based on a review of the facility's determination  
7   or to appeal determinations of ineligibility made directly by professional staff  
8   designated by the Department in accordance with proposed N.J.A.C. 8:86-1.5(a).  
9   Such hearings are scheduled by the Office of Administrative Law and are held before  
10   an Administrative Law Judge.

12           Proposed N.J.A.C. 8:86-1.5(g) sets forth new clinical eligibility criteria. The  
13   subsection offers two possible avenues to a determination of eligibility. The first is based  
14   upon an individual's need for limited physical assistance in activities of daily living or  
15   need for skilled services provided by a nurse or rehabilitation services for a time-limited  
16   period. The alternative criterion is based upon an individual having a need for  
17   supervision or cueing in activities of daily living and upon the individual exhibiting certain  
18   cognitive difficulties. In a complementary action, the Department is proposing the repeal  
19   of the Medicaid eligibility criteria at N.J.A.C. 8:43F-2, thereby removing any  
20   inconsistency.

21           Proposed N.J.A.C. 8:86-1.5(h) provides that individuals whose needs are being  
22   met in other ambulatory care settings or who require 24-hour per day inpatient care are  
23   ineligible to receive adult day health services.

1           The current rules preclude residents of residential health care facilities from also  
2 being adult day health services beneficiaries, while setting forth possible exceptional  
3 circumstances. Proposed N.J.A.C. 8:86-1.5(h)2 retains the prohibition at current  
4 N.J.A.C. 8:86-1.4(b)5, but does not specify exceptional circumstances under which  
5 residents of residential health care facilities would also be able to receive adult day  
6 health services. The exceptions were appropriate when the current rule was originally  
7 adopted, but due to the expansion of home and community based services, the  
8 Department has determined that short term services to residents of residential health  
9 care facilities can be provided in settings more appropriate than an adult day health  
10 services facility.

11           Proposed N.J.A.C. 8:86-1.5(i) documents the currently applied eligibility criteria  
12 specific to an individual receiving services in an HIV adult day health services facility.

13           Proposed N.J.A.C. 8:86-1.5(j) addresses the issue of pediatric eligibility, currently  
14 addressed at N.J.A.C. 8:86-1.4(b)6. This subsection includes specification of an age  
15 range of birth through five years for an eligible child because the school system  
16 responsible for the child assumes the cost for the services after the age of five.

17           Additionally, the subsection provides the Department's criteria for being considered a  
18 "technology dependent" or a "medically unstable" child. Prior authorization does not  
19 routinely apply to pediatric day health services at this time. The Department, however,  
20 is conducting a study of pediatric day health services and will promulgate revised rules  
21 for these facilities in the future. Such revisions may include the requirement for prior  
22 authorization conducted by the Department. Proposed N.J.A.C. 8:86-1.5(k) gives the  
23 Department the authority to require, at its discretion, prior authorization of eligible

1 beneficiaries by professional staff designated by the Department in new or existing  
2 pediatric day health services facilities. As a consequence of the proposed rule and the  
3 concurrent proposal of the Department to amend the licensure rules, this authority would  
4 be relocated from current N.J.A.C. 8:43F-2.2(b) to N.J.A.C. 8:86-1.5(k).

5 Reimbursement for adult and pediatric day health services is addressed at  
6 proposed N.J.A.C. 8:86-1.6, to be recodified from N.J.A.C. 8:86-1.8. Although  
7 necessary technical revisions and clarifications have been made at proposed N.J.A.C.  
8 8:86-1.6(a), to be recodified from N.J.A.C. 8:86-1.8, the reimbursement methodology for  
9 both adult and pediatric day health services facilities remains unchanged.

10 Proposed N.J.A.C. 8:86-1.6(a) has been amended so that rates are proposed to  
11 be set once a year, on July 1, and not semi-annually, on January 1 and July 1, as in the  
12 existing rule.

13 Proposed N.J.A.C.8:86-1.6(a)1 requires that, if applicable, rehabilitative services  
14 shall be billed on the CMS-1500, incorporated by reference as Exhibit D.

15 The current text of N.J.A.C. 8:86 includes a number of rules indicating whether  
16 or not certain specified services are included in the per diem reimbursement rate for  
17 adult or pediatric day health services, how some services are to be billed, and other  
18 details of the mechanics of the reimbursement process. These rules have been  
19 consolidated in proposed N.J.A.C. 8:86-1.6. Technical changes have been made and  
20 the rule has been modified so as to clearly be applicable to Medicaid beneficiaries  
21 and/or to participants in the State-only funded Home Care Expansion (HCEP) or  
22 Jersey Assistance for Community Caregiving (JACC) Programs, where appropriate.  
23 Proposed N.J.A.C. 8:86-1.6(a)1i is currently represented by N.J.A.C. 8:86-1.4(a)7iii,

1 proposed N.J.A.C. 8:86-1.6(a)2 by current N.J.A.C. 8:86-1.4(a)3ii(1)(D) and (E),  
2 proposed N.J.A.C. 8:86-1.6(b) by current N.J.A.C. 8:86-1.4(a)10iii, proposed N.J.A.C.  
3 8:86-1.6(c) by current N.J.A.C. 8:86-1.4(a)3ii(1), and proposed N.J.A.C. 8:86-1.6(g) by  
4 current N.J.A.C. 8:86-1.6(c). Current N.J.A.C. 8:86-1.8(b) through (d) have been  
5 clarified and recodified as N.J.A.C. 8:86-1.6(d) through (f).

6 A proposed amendment to N.J.A.C. 8:86-2.1(a) recognizes the change in name  
7 of the Federal Health Care Financing Administration (HCFA) to the Centers for  
8 Medicare and Medicaid Services (CMS). The fact that a separate billing code is used  
9 specifically for the JACC program is noted at N.J.A.C. 8:86-2.1(a), and the JACC code  
10 has been added at proposed N.J.A.C. 8:86-2.2(b).

11  
12 Appendix A, Medicaid Provider Application, is being repealed and replaced with  
13 proposed Appendix A as described above.

14  
15 Appendix B, Participation Agreement, is being repealed and replaced with  
16 proposed Appendix B described above.

17  
18 Although proposed for repeal and replacement with a new rule, Appendix C,  
19 Outline for Written Narrative Statement on Proposed Adult or Pediatric Day Health  
20 Services Facility, is proposed for adoption in substantially the form as in the current  
21 rules with minor technical corrections.

1 As stated above, Appendices D through F are proposed for repeal. Current  
2 Appendix G, Health Insurance Claim Form, is proposed for repeal and will be replaced  
3 by proposed Exhibit D. Appendix H is proposed for recodification as Appendix E  
4

5 As the Department has provided a 60-day comment period for this notice of  
6 proposal, this notice is excepted from the rulemaking calendar requirement pursuant to  
7 N.J.A.C. 1:30-3.3(a)5.  
8  
9

### 10 **Social Impact**

11

12 There are approximately 9,000 beneficiaries of Medicaid or exclusively State-  
13 funded programs receiving adult or pediatric day health services over the course of a  
14 year. It is in the interest of these individuals and of the licensed and Medicaid-enrolled  
15 adult and pediatric day health services facilities which serve them that the rules at  
16 N.J.A.C. 8:86 be as clear and as accurate as possible. Many of the amendments being  
17 proposed have greater consistency, clarity, and accuracy as a goal.

18 A significant step in the effort to achieve consistency and clarity among the  
19 ensemble of rules which apply to adult and pediatric day health services facilities is  
20 represented by the repeal of a number of sections which address areas better addressed  
21 in the licensure rules at N.J.A.C. 8:43F. These proposed repeals will remove both  
22 technical and substantive differences between the two sets of existing rules. For  
23 example, the currently conflicting terminology often leads to the supposition that the



1 “medical director” and the “medical consultant” of the facility are distinct persons. In fact,  
2 these two terms are intended to be synonymous, and the proposed rules will eliminate  
3 use of the term “medical director.”  
4

5 The proposed requirements concerning adult day health services eligibility with  
6 respect to an adult beneficiary’s need for nursing services, rehabilitation services, limited  
7 assistance with activities of daily living, and supervision or cueing at proposed N.J.A.C.  
8 8:86-1.5(g) will provide a higher level of assurance that beneficiaries receive appropriate  
9 services in an adult day health services facility. Identification, by means of an initial prior  
10 authorization process, of individuals who require measurable levels of care will expand the  
11 opportunity for these individuals to remain in the community. The proposed requirement  
12 for periodic eligibility reassessments at proposed N.J.A.C. 8:86-1.5(d) will similarly  
13 contribute to the goal of appropriate placement.

14 In the process of drafting the proposed rules, the Department met with and  
15 consulted with the regulated community on numerous occasions through 2003 and  
16 2004. Representatives from the regulated community included the New Jersey  
17 Hospital Association, the New Jersey Adult Day Health Association, the Health Care  
18 Association of New Jersey, the New Jersey Association of Non-Profit Homes for the  
19 Aging and Alliance for the Betterment of Citizens with Disabilities (ABCD). The  
20 proposed rules were drafted with significant input from these groups, especially in the  
21 formulation of the proposed clinical eligibility criteria.  
22

1  
2  
3  
4 **Economic Impact**  
5

6       The proposed amendments, repeals, and new rules will have no direct economic  
7 impact upon eligible individuals currently receiving adult or pediatric day health services,  
8 as they will continue to receive these services.

9       In recent years, the rate of growth in the adult and pediatric day health services  
10 industry has increased significantly. The average monthly caseload has increased from  
11 3,000 in 1997 to over 9,000 in 2004. The expansion of licensed adult and pediatric day  
12 health services slots has intensified the need for the Department to be able to ensure the  
13 appropriateness of admissions to all adult or pediatric day health services facilities.  
14 Escalating cost of reimbursement for services provided to individuals who do not require  
15 care in an adult or pediatric day health services facility could undermine the financial  
16 viability of the Medicaid adult and pediatric day health services program. It is essential  
17 that the Department be able to oversee program costs.

18       Recent inspections conducted by the Department have demonstrated that some  
19 adult day health services facilities are serving individuals who do not require adult day  
20 health services. Moreover, the Office of Legislative Services (OLS) has conducted an  
21 audit of the program for the period from July 1, 2000, to October 31, 2002, and this audit  
22 has led OLS to recommend that the Department “immediately redefine existing

1 regulations to clearly state eligibility requirements ... and to adequately define the types of  
2 medical conditions which warrant services to ensure only the intended population is  
3 served.” OLS also recommended that the Department “reinstate its preadmission  
4 screening process to evaluate clients in order to determine the necessity, appropriate  
5 level, and frequency” of services. Consequently, new eligibility criteria have been  
6 incorporated into this proposal. Implementation of a system of prior authorization by the  
7 Department based upon use of a standardized assessment instrument and more precise  
8 eligibility criteria represents a reasonable solution to the problem presented by the  
9 escalating costs of adult day health services, which for State fiscal year 2004 were  
10 approximately \$118 million (State and Federal shares combined). The Department  
11 estimates the cost to the State of New Jersey for the staff needed to perform prior  
12 authorization to be approximately \$700,000 annually.

13 As a result of reinstating prior authorization using a standardized assessment  
14 tool, some facilities may experience a lower utilization rate if these amendments and  
15 new rules are adopted. However, the Department believes that the procedures for prior  
16 authorization and assessment will result in a comprehensive, fair and consistent  
17 evaluation of potential beneficiaries. The application of this enhanced process is  
18 expected to result in more appropriate utilization of this service and a net decrease in  
19 State expenditures.

20 The Department believes that the utilization of certified public accountants using  
21 generally accepted accounting principles in the preparation of financial statements and the  
22 submission of cost reports, as required at proposed N.J.A.C. 8:86-1.3(a)4, will result in the  
23 collection and analysis of data which may, in turn, serve as a basis for future refinements

1 to the reimbursement methodology for adult and pediatric day health services that may  
2 ultimately yield economic benefits.

### 3 4 5 **Federal Standards Statement**

6  
7 “Medical day care” (adult or pediatric day health services) is an approved part of  
8 New Jersey’s Title XIX State Plan as an independent clinic service. There are no  
9 specific Federal standards governing the provision of adult or pediatric day health  
10 services. These proposed amendments, new rules and repeals do not exceed the  
11 Federal standards for clinic services at 42 C.F.R. 440.90, therefore, a Federal  
12 standards analysis is not required.

### 13 14 **Jobs Impact**

15  
16 The proposed amendments, repeals, and new rules would not significantly alter the  
17 requirements governing the operation of the adult or pediatric day health services  
18 facilities, but, rather, would result in the operational standards being largely localized in  
19 the licensure rules at N.J.A.C. 8:43F. It is not anticipated, therefore, that these rules will  
20 have a significant effect on the size of the adult or pediatric day health services facility  
21 staff.

22 However, the OLS Audit referred to above noted that, “This program has  
23 apparently evolved from providing services as an alternative to nursing home care to

1 providing services to any participant eligible for Medicaid and some providers are  
2 actively recruiting from senior housing to fill their allotted slots through the use of  
3 advertising circulars and open house visits.”

4 Adoption of the proposed eligibility requirements may result in a loss of jobs as a  
5 result of a reduction in the number of beneficiaries served in adult day health services  
6 facilities under the prior authorization process. To the extent that some providers are  
7 unable to enroll individuals who meet the eligibility standards of the rules, these  
8 programs may suffer a loss of income that may result in a loss of jobs at their facilities.

9 The proposed rules were drafted to define the eligibility standards required for  
10 admission to an adult day health services facility and proposed eligibility criteria are  
11 expected to lead to a better utilization of this service. However, the Department strongly  
12 believes that adult and pediatric day health services present a home and community  
13 based alternative to institutional placement. Further, the Department believes that as the  
14 New Jersey demographic changes and ages, that there will be a continued strong  
15 demand for this service now and in the future.

#### 16 17 **Agriculture Industry Impact**

18  
19 The proposed amendments, repeals, and new rules would have no impact on the  
20 agriculture industry.

#### 21 22 **Regulatory Flexibility Analysis**

1           The proposed amendments and new rules would impose the reporting,  
2   recordkeeping and other compliance requirements described in the Summary above.  
3   Many of New Jersey's 130 adult and pediatric day health services facilities are small  
4   businesses, within the meaning of the New Jersey Regulatory Flexibility Act, N.J.S.A.  
5   52:14B-16 et seq. The rules at N.J.A.C. 8:86, however, apply equally to all providers of  
6   adult or pediatric day health services participating in the New Jersey Medicaid, HCEP, or  
7   JACC programs. Providers are required to maintain records necessary for submitting  
8   claims for reimbursement for services rendered. Compliance with the procedures  
9   specified in the proposed rules will help to ensure that providers are reimbursed in a  
10   timely manner for those services which are appropriate for reimbursement.

11           N.J.A.C. 8:86-1.3(a)3 has been amended so as to simplify and expedite the  
12   maintenance and reporting of beneficiary-specific attendance information.

13           Facilities are currently required to prepare an annual cost report. The reporting  
14   procedure is identical for all facilities, regardless of size. The proposed amendment at  
15   N.J.A.C. 8:86-1.3(a)4 would change this reporting process by requiring facilities to  
16   prepare a yearly financial statement, in addition to cost reports. The financial  
17   statements shall be verified by certified public accountants using generally accepted  
18   accounting principles. All facilities, regardless of size, will be required to comply with  
19   these reporting requirements. Although use of such licensed persons may add to the  
20   cost of report preparation, these costs should be offset by the advantages of having  
21   data of greater reliability for the Department to oversee the costs associated with this  
22   program element

1 Finally, the Department's goals of redefining eligibility requirements to enable the  
2 Department to evaluate clients to determine the necessity and appropriate level of  
3 services and to exercise prudent fiscal control over the escalating costs of this program  
4 element would be frustrated if such reporting, record keeping and other compliance  
5 requirements are not adopted.

### 6 7 8 **Smart Growth Impact**

9  
10 The proposed amendments, repeals, and new rules would have no impact on the  
11 achievement of smart growth or implementation of the State Development and  
12 Redevelopment Plan.

13 **Full text** of the proposed repeals may be found in the New Jersey Administrative  
14 code at N.J.A.C.-1.4, 1.5, 1.6, 1.7 and 1.9 and 8:86 Appendices A through G.

15 **Full text** of the proposed amendments and new rules follows (additions indicated  
16 in boldface **thus**; deletions indicated in brackets [thus]):